THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P.NO.3248 OF 2005

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BETWEEN

Ch.Gangaraju son of Krishnamurthy

..petitioner

vs.

M/S.A.P.Power Generation Corporation Ltd., rep.by its Chief Engineer Operation and Maintenance, Ibrahimpatnam

..Respondent

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THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P.NO.3248 OF 2005

ORAL ORDER

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Heard the counsel for the respective parties.

What is challenged in the writ petition is a memo bearing reference No.CEE/O&M/SAO-II/VTPS/PRS-II/C3/D.No.9452/04 dated 27-11-2004 whereby

and where under the annual increments sanctioned by the R&B Department (PWD Organization) from 22-04-1977 onwards to the petitioner, were cancelled and the petitioner's pay re-fixed as specified in the order; the petitioner is sanctioned a specified quantum of family planning incentive increment; is declared as not eligible for special grade pay; and is sanctioned two additional increments as specified in the order. The impugned order also informs the petitioner that the excess amount drawn by him in the R&B Department towards the increments released in his favour would be recovered from his terminal benefits and that after such deduction, his terminal benefits up to the end of 31-07-1974(the date with effect from which he retired from service on superannuation) would be paid to him.

The petitioner was initially appointed as a Tester in the A.P.S.E.B in 1964; was later appointed as Supervisor (Electrical) in 1969 and was thereafter deputed to work in the R&B Department in November 1969. He served in the R&B Department till April-1990 where after he was repatriated to the A.P.S.E.B. While serving in the R&B Department on deputation his services were regularized in the cadre of Additional Assistant Engineer with effect from 04-01-1970 and was placed under probation for a period of two (2) years within a continuous period of three (3) years, by the Board's proceedings dated.22-04-1977. During the petitioner's tenure on deputation in the R&B Department from 04-01-1970 to 04-06-1970 his annual grade increments were also released. He retired on superannuation in the A.P.S.E.B on 31-07-1994. After retirement he was sanctioned anticipatory pension with effect from 01-08-1994. He submitted the relevant papers for grant of pension but his regular pension was not sanctioned or released. His repeated representations for release of pension went unheeded.

While so by a memo dated 21-05-1997, after the petitioner's superannuation, the A.P.S.E.B cancelled the annual grade increments sanctioned to the petitioner from 04—01-1972 onwards and re-fixed his pay besides directing recovery of the alleged excess incremental benefits received by him during his tenure in R&B Department. Aggrieved by this order, the petitioner instituted W.P.No.6258 of 1997. This Court granted interim stay of the operation of the memo dated 25-02-1997. On 17-09-1994 the writ petition was disposed of declaring that the memo be treated as a show-cause and calling upon the petitioner to submit his objections to the proposals in the memo. The petitioner submitted his objections. Thereupon the impugned order, a memo dated 27-11-2004, was issued canceling the annual grade

increments yet again.

Another claim of the petitioner is that the impugned order was passed four (4) years after his retirement and denying him the benefit under BPMs.No.375 dated 20-12-1994. It appears that in G.O.Ms.No.475 dated 20-09-1994 Government had passed orders granting exemption from passing the tests prescribed in the statutory rules (which are made a pre-condition for drawal of increments and for declaration of probation), in respect of those employees who have completed 45 years of age. This Government order was adopted by the A.P.S.E.B in BPMs.No.375 dated 20-12-1994. The benefit of this exemption, however, would not accrue to the petitioner as he had retired with effect from 31-07-1994 earlier to the issuance of BPMs.No.375.

The basis of the impugned order is that the petitioner cannot be said to have completed his period of probation satisfactorily as he was required to pass the Accounts Test for Assistant Engineer/Additional Assistant Engineer (Electrical) during the period of probation as per Regulation Part-III annexure-IV. As he has not passed the said examination, he was not entitled either for declaration of probation or incremental benefits. According to the respondent, the petitioner is not entitled for incremental benefits beyond 22-04-1977 and as the incremental benefits were erroneously released by the R&B Department, they could be recovered by the A.P.S.E.B (now the A.P.GENCO).

The Law Officer of the respondent has filed a counter-affidavit. It is herein stated that the petitioner submitted his pension papers on 07-03-1994 and on going through them it was observed that the petitioner's probation was not declared. Thereafter the Head Office of the A.P.S.E.B (the erstwhile corporate entity of the A.P.Genco) was corresponding with the PW.D department complaining about the irregular release of increments to the petitioner. Eventually, it is stated, the Executive Engineer R&B Vijayawada addressed the Chief Engineer, VTPS by a letter dated 27-03-1996 stating that if increments were erroneously released to the petitioner and contrary to the rule position, the same may be regularized by the A.P.S.E.B. In view of this letter of the Executive Engineer, R&B, Vijayawada, the counter implies, the increments erroneously paid to the petitioner are now sought to be recovered from his terminal benefits. Therefore appears no other authority for the impugned order.

Smt.Urmila learned Standing Counsel for the respondent would strenuously urge that Rule.9 of the A.P.Revised Pension Rules,1980(for short "the Rules")

enables the recovery from the employee of any loss caused to the employer. This contention is stated to be rejected. Rule.9 of the Rules sets out the right of the employer to withhold or withdraw the pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused, to the Government and to the local authority if, *in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the period of his service*. It is nobody's case that the petitioner had mislead the A.P.S.E.B, the R&B or the A.P.Genco to release increments in his favour. The error if any committed was a self propelled error of the R&B Department. The misconduct if any is of that Officer of the R&B Department or that of the erstwhile A.P.S.E.B who either singly or together and negligently failed to look into the relevant legal position and the factual matrix of the petitioner's service to ascertain whether he was entitled to incremental benefits before releasing such incremental benefits in his favour. The petitioner cannot in the circumstances, be said to be even vicariously associated with such errors of the original employer or the employer with whom the petitioner worked on deputation-R&B Department. Rule 9 of the Rules has therefore no application. No other statutory provision is brought to the notice of this Court, whereby a foundation for the exercise of powers for issuing the impugned order is claimed or established. Pension is a property and is earned by an employee on account of his long and satisfactory service with the employer. Deprivation of such property is constitutionally required to be by the authority of Law (Article 300-A of the Constitution). No authority of law is either pleaded, urged or established for the issuance of the impugned order, which withholds the property of the petitioner (the pension) he is entitled to. So far as the withdrawal of the incremental benefits earned by the petitioner from 22-04-1977 onwards is concerned, it requires to be noticed that proceedings were initiated for recoveries of these amounts for the first time in 1987 nearly three years after the petitioner's retirement and 20 years after such increments were paid to him. Effecting recoveries after such long period is arbitrary and recoveries cannot be made from the pension in the absence of any legal authority.

Neither the impugned order nor the counter-affidavit state, nor the learned counsel for the respondents establish before this Court how the A.P.Genco is an agency for the R&B Department for recoveries of the increments paid to the petitioner irregularly. Whether the authority and power to collect the erroneously paid

amounts to the petitioner, is an authority flowing from Law, a statutory instrument, a contractual agreement between the R&B Department and the A.P.S.E.B(A.P.GENCO) or even a memorandum of understanding, is not specified. That is as far as the nexus between the R&B Department and A.P.Genco is concerned. Insofar as the petitioner is concerned, his active employee-employer nexus with the A.P.Genco stood determined with effect from 31-07-1994 on his superannuation. If the respondents, the former employer desires to reach out to the pension or terminal benefits payable to the petitioner there should be some legal arrangement under which such recoveries could be made. It is not the respondent's case that the petitioner has committed any misconduct or occasioned loss either to the R&B Department or to the A.P.Genco. The substratum of the respondent's case is that increment benefits were erroneously paid to the petitioner by the R&B Department and therefore they are being recovered by A.P.Genco. In the absence of any legal provision, such recoveries cannot be sustained.

The learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in **Devaki Nandan Prasad Vs. State of Bihar()** and of a Division Bench of the Punjab and Haryana High Court in **Manmohan Singh Vs. State of Punjab()** and on the pleading in the writ petition seeks a direction that the respondent pay the petitioner interest for the unjustifiably long deprivation of the terminal benefits to him.

The petitioner retired with effect from 31-07-1994 on superannuation. He submitted the relevant papers for processing of his pensionary benefits, in time. On this account there is no demurral. In the circumstances the respondent was obligated to compute, sanction and pay the final pension to the petitioner expeditiously, which however it failed to do on several jejune grounds. The respondent has denied the petitioner the benefit of regular fixation and payment of his pension. In the circumstances and in the light of the Law declared and established the petitioner is entitled to be re-compensated for the withholding of his pensionary benefits. What the measure of the restitution be depends on the facts and circumstances of each case. In the case on hand the petitioner has been granted anticipatory pension, which is stated of the order of Rs.2500/- per month. Neither of the counsel state what is the quantum of pension the petitioner was

entitled to. In any event as the full of the petitioner has not been paid, though some amount of such total pension appears to have been paid as anticipatory pension, in the circumstances of this case and in the considered view of this Court, the requirement of justice and fairness are met if the respondents are directed to pay the petitioner costs in an amount of Rs.25,000/-(Rupees twenty five thousand only) towards deprivation-withholding and delayed payment of the pensionary benefits to him.

Accordingly the impugned memo bearing reference No. CEE/O&M/SAO-II/VTPS/PRS-II/C3/D.No.9452/04 dated 27-11-2004 is set aside to the extent it directs withdrawal from the petitioner's pension and other terminal benefits, of the amount of incremental benefits allegedly paid to him irregularly by the R&B while the petitioner was on deputation to the R&B. The respondent is directed to compute, sanction and pay the petitioner all the terminal benefits he is entitled to with expedition and despatch and in any event within a period of sixty(60) days from the date of receipt of a copy of this Order. The respondents shall also pay the petitioner costs in an amount of Rs.25,000/-(Rupees twenty five thousand only) within three(3) months from the date of receipt of a copy of this Order. In this the respondent shall not fail, demur or default.

The writ petition is allowed with costs as above.

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GODA RAGHURAM,J

25th JANUARY 2006

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